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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/006,970	12/04/2001	Dale Kempf	RAR102.05	1804
7590	02/25/2004		EXAMINER	
Richard A. Ryan RYAN & ENGNATH Suite 104 8469 N. Millbrook Fresno, CA 93720			WAYNER, WILLIAM E	
		ART UNIT	PAPER NUMBER	
		3744		
DATE MAILED: 02/25/2004 10				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	10/006,970	Applicant(s)
Examiner		KEMPF DALE ET AL
	WILLIAM WAYNER	Art Unit 3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1)  Responsive to communication(s) filed on 12/18/03

2a)  This action is FINAL. 2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4)  Claim(s) 1-56 is/are pending in the application.

4a) Of the above claim(s) 44-56 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-6, 8-11, 13, 15-19, 32, 33, 35, 37 is/are rejected.

7)  Claim(s) 31, 14, 20-31, 34, 36, 38-43 is/are objected to.

8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.

12)  The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.

2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

15)  Notice of References Cited (PTO-892)  
 16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

18)  Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_  
 19)  Notice of Informal Patent Application (PTO-152)  
 20)  Other: \_\_\_\_\_

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 10, 11, 13, 15-19, 32, 33, 35, 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters in view of Weber.

Peters shows a water control arrangement in which there is a thermally actuated by-pass (FIG .2) is mounted beneath hot and cold operating valves 7, 9. Weber shows a fixture 180-1 in which the operating valves 186-1 and 182-1 and a by-pass 194 are within the fixture (note col. 4, lines 34,35, “ – control device may be incorporated directly in the structure of a set of faucets”). In order to obtain a unitary easily installed unit it would have been obvious to make Peter's arrangements into a unitary fixture.

Claims 4-6, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 and further in view of admitted prior art of applicant's FIG. 2. In order to provide a commercially known thermal actuator it would have been obvious to use the wax actuator of FIG. 2 in Peters.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 in view of Binnall et al.

In order to ensure longer valve action it would have been obvious to provide contaminant screens 81 in the inlet water lines, as shown by Binnall et al.

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Claims 7, 12, 14, 20-31, 3, 36, 38-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 44-56 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

Any inquiry concerning this communication should be directed to William Wayner at telephone number 308-1041.

Wayner/DI

February 17, 2004

  
William Wayner  
Primary Examiner